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United States District Court, N.D. California.
Krisha Elon BECK, Plaintiff,
v.
CITY OF NEWARK, et al., Defendants.
No. C95-4275 MJJ.

July 15, 1998.

ORDER DENYING MOTION FOR LEAVE TO
AMEND COMPLAINT TO IDENTIFY DOE
DEFENDANTS; AND ORDER REMANDING
ACTION TO ALAMEDA COUNTY SUPERIOR
COURT

JENKINS, District J.

INTRODUCTION

*1 This is an action for civil rights violations under 42 U.S.C. § 1983, as well as various state law torts, arising out of a traffic stop in which plaintiff Krisha Elon Beck was allegedly touched in an offensive manner by a City of Newark police officer. Pending before the Court is plaintiff's motion for leave to amend her complaint to identify two City of Newark police officers as doe defendants. For the reasons set forth below, the Court DENIES the motion and REMANDS this action to the Alameda County Superior Court for lack of subject matter jurisdiction.

BACKGROUND

On February 20, 1994, plaintiff and her boyfriend, Aaron Laster, were driving in Mr. Laster's automobile in Newark, California. Plaintiff was seated in the driver's seat and Mr. Laster was seated in the front passenger's seat. At approximately 8:00 p.m., police officer David Hutchinson signaled plaintiff to pull over in order to investigate an outstanding arrest warrant that had been issued for Mr. Laster. U.S. Wildlife officer Jim Ferrier and police officer Greg Olmstead arrived at the scene moments later in separate vehicles to provide backup. Officer Hutchinson arrested Mr. Laster on the outstanding warrant.

According to the Municipal Defendants, plaintiff was released after confirmation of her identity and no outstanding warrants. Plaintiff recalls the incident differently; she claims to have been touched improperly and detained in violation of both her constitutional rights and California law. On February 17, 1995, plaintiff instituted this action in the Alameda County Superior Court. The complaint initially named as defendants only the City of Newark, the City of Newark Police Department, and ten doe defendants. The complaint was removed to this Court on federal question grounds on November 29, 1995.

On April 7, 1998, the Municipal Defendants moved the Court for summary judgment of plaintiff's Section 1983 claims arguing that, as a matter of law, plaintiff cannot establish municipal liability. In response to the Municipal Defendants' motion for summary judgment, plaintiff moved the Court for leave to amend her complaint to identify the two City of Newark police officers allegedly responsible for plaintiff's injuries. That motion was filed on May 12, 1998. Both motions were heard before this Court on June 30, 1998. At the June 30 hearing, the Court granted summary judgment in favor of the Municipal Defendants, finding that plaintiff had failed to sustain her evidentiary burden. The Court took under submission plaintiff's motion for leave to amend her complaint to identify doe defendants. That motion is the subject of the instant Order.

FN1. There are three ways a Section 1983 plaintiff may establish liability against a municipality. First, the plaintiff may prove that a city employee committed the alleged constitutional violation pursuant to a formal governmental policy or a "longstanding practice or custom which constitutes the 'standard operating procedure' of the local governmental entity." Gillette v. Delmore, 979 F.2d 1342, 1346 (9th Cir.1992)(quoting Jett v. Dallas Indep. Sch. Dist., 491 U.S. 701, 737, 109 S.Ct. 2702, 105 L.Ed.2d 598 (1989)); see also Monell v. Department of Social Servs., 436 U.S. 658, 690-91, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978). "Second, the plaintiff may establish that the individual who committed the constitutional tort was an official with 'final policy-

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making authority' and that the challenged action itself thus constituted an act of official governmental policy. *Id.* (citing *Pembaur v. City of Cincinnati*, 475 U.S. 469, 480-81, 106 S.Ct. 1292, 89 L.Ed.2d 452 (1986); *McKinley v. City of Eloy*, 705 F.2d 1110, 1116 (9th Cir.1983)). The issue of whether a particular official has final policy-making authority is a question of state law. *Id.* (citing *Jett*, 491 U.S. at 737). Third, the plaintiff may prove that an official with final policy-making authority ratified a subordinate's unconstitutional decision or action and the basis for it. *Id.* (citing *City of St. Louis v. Praprotnik*, 485 U.S. 112, 123-24, 108 S.Ct. 915, 99 L.Ed.2d 107 (1988)). In the instant case, plaintiff failed to present any evidence whatsoever to establish the existence of Section 1983 liability.

DISCUSSION

A. Legal Standard for Leave to Amend

Rule 15(a) of the Federal Rules of Civil Procedure provides that a party may amend its pleadings "by leave of court" and that "leave shall be freely given when justice so requires." Fed.R.Civ.P. 15(a). The Ninth Circuit has held that this rule should be applied with "extreme liberality" in favor of allowing amendments. *Jones v. Bates*, 127 F.3d 839, 847 n. 8 (9th Cir.1997) (citations omitted). The Ninth Circuit has also held that a court should consider four factors in determining whether to grant leave to amend. They are (1) undue delay; (2) bad faith; (3) futility of amendment; and (4) prejudice to the opposing party. *United States v. Pend Oreille Public Utility Dist. No. 1*, 926 F.2d 1502, 1511 (9th Cir.1991); *DCD Programs Ltd. v. Leighton*, 833 F.2d 183, 186 (9th Cir.1987). "These factors, however, are not of equal weight in that delay, by itself, is insufficient to justify denial of leave to amend." *DCD Programs*, 833 F.2d at 186; see also *Jones*, 127 F.3d at 847 n. 8. A trial court's denial of leave to amend a complaint is reviewable only for an abuse of discretion. *Plumeau v. School Dist. No. 40*, 130 F.3d 432, 439 (9th Cir.1997). "The District Court's discretion to deny leave to amend is particularly broad where plaintiff has previously amended the complaint." *Ascon Properties v. Mobil Oil Co.*, 866 F.2d 1149, 1160 (9th Cir.1989).

B. Analysis

*2 The Municipal Defendants argue that leave to amend the complaint should be denied because plaintiff's allegations against Officers Hutchinson and Olmstead are time-barred; accordingly, the Municipal Defendants contend that amendment would be futile. Because the incident giving rise to this lawsuit occurred on February 20, 1994, over four years before plaintiff sought to identify Officers Hutchinson and Olmstead as doe defendants, the critical issue presented by plaintiff's motion is whether the allegations against Officers Hutchinson and Olmstead relate back to the filing of plaintiff's original complaint.

Plaintiff argues that her substitution of Officers Hutchinson and Olmstead comports with Section 474 of the California Code of Civil Procedure which permits a plaintiff who is ignorant of the identity of a party responsible for damages to name that person in a fictitious capacity, and extends the time limit prescribed by the applicable statute of limitations to the unknown defendant. Such practice has been explained by the California Courts of Appeal as follows:

FN2. Section 474 provides in pertinent part as follows:

When the plaintiff is ignorant of the name of a defendant, he must state that fact in the complaint...and such defendant may be designated in any pleading or proceeding by any name, and when his true name is discovered, the pleading or proceeding must be amended accordingly....

A plaintiff ignorant of the identity of a party responsible for damages may name that person in a fictitious capacity, a Doe defendant, and that time limit prescribed by the applicable statute of limitations is extended as to the unknown defendant. A plaintiff has three years under section 581a, subdivision (a) after the commencement of the action to discover the identity of the unknown defendant and effect service of the complaint. [Citation.] When the complaint is amended to substitute the true name of the defendant for the fictional name, the defendant is regarded as a party from the commencement of the suit, provided the complaint has not been amended to seek relief on a different theory based on a general set of facts other than those set out in the original complaint. [Citations.] The statute (§ 474) must be liberally construed to enable a plaintiff to avoid the bar on the

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statute of limitations where he is ignorant of the identity of the defendant. [Citation.]

FN3. Section 581a, subdivision (a) was repealed in 1984 and replaced in relevant part by Section 583.210 and 583.250, which similarly require plaintiffs to serve the summons and complaint within three years of filing suit.

Munoz v. Purdy, 91 Cal.App.3d 942, 946, 154 Cal.Rptr. 472 (1979). The Ninth Circuit has approved the substitution of parties for doe defendants in Section 1983 cases provided the requirements of Section 474 of the California Code of Civil Procedure are met. Cabrales v. County of Los Angeles, 864 F.2d 1454, 1463 (9th Cir.1988); see also Kreines v. United States, 959 F.2d 834, 837 (9th Cir.1992)(“We [the Ninth Circuit] have approved the use of the substitution rule [§ 474] in a § 1983 suit.”).

As set forth above, the incident giving rise to this litigation occurred on February 20, 1994, and plaintiff filed her complaint on February 17, 1995, more than three years prior to plaintiff's having sought leave to identify Officers Hutchinson and Olmstead as doe defendants. Under Section 474, however, plaintiff was required to identify any unknown defendant and effect service of the complaint on all parties within three years. Since it is undisputed that more than three years have passed since the filing of plaintiff's original complaint and that Officers Hutchinson and Olmstead have never been served with a copy of the complaint and summons, the Court finds that Section 474 does not permit plaintiff to identify Officers Hutchinson and Olmstead at this late date. Accordingly, plaintiff's motion for leave to amend her complaint to identify Officers Hutchinson and Olmstead as doe defendants is DENIED.

*3 Having so found, and having previously granted summary judgment of plaintiff's Section 1983 allegations, there is no longer a federal question remaining to be determined by the Court. Thus, the last issue presented is whether the Court should continue to exercise its supplemental jurisdiction over plaintiff's state law claims or remand this action to state court. See 28 U.S.C. § 1376(c)(“The district courts may decline to exercise supplemental jurisdiction over a claim...if...the district court has dismissed all claims over which it has original jurisdiction.”). As the United States Supreme Court

stated in United Mine Workers of America v. Gibbs, 383 U.S. 715, 726, 86 S.Ct. 1130, 16 L.Ed.2d 218 (1966), “[c]ertainly, if the federal claims are dismissed before trial...the state claims should be dismissed as well.” The only causes of action remaining in this action are based on state law, and the Court finds no compelling reason to retain jurisdiction over such claims. Accordingly, the Court hereby REMANDS this action to the Alameda County Superior Court. The Clerk of the Court is ORDERED to transfer the file of this matter to the Alameda County Superior Court forthwith.

IT IS SO ORDERED.

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Beck v. City of Newark

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